

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
SAN FRANCISCO, CALIFORNIA**

In the Matter of:	)	
	)	<b>R9-2001-05 (Construction)</b>
Kern River Gas Transmission Company	)	
	)	<b>Administrative Order on Consent</b>
Daggett, California Facility	)	<b>42 U.S.C. §7413(a)(1), (4)</b>
_____	)	

**I. Findings of Fact:**

WHEREAS, on January 17, 2001, Governor Davis of the State of California proclaimed a State of Emergency due to the shortage of electricity in California and on February 8, 2001, issued Executives Orders (the “Executive Orders”), directing the California regulatory authorities to implement numerous actions designed to increase the generation of electricity in California;

WHEREAS, pursuant to the Executive Orders California is in the process of permitting new electric generating units that will increase the available electricity by up to 1000 - 1200 megawatts (“MW”) by July 2001;

WHEREAS, these new electric generating facilities will be required under their permits to operate to use only natural gas fuel;

WHEREAS, California has determined that there will be a shortage of natural gas available for the additional electric generating units unless pipeline capacity in California is substantially increased by July 2001, as demonstrated in documents provided to the United States Environmental Protection Agency’s Office of Air and Radiation;

WHEREAS, Kern River Gas Transmission Company (“Kern River”) shall submit pursuant to Paragraph IV an application for an Authority To Construct (“ATC”) Permit from the Mojave Desert Air Quality Management District (“MDAQMD”) to allow the construction and operation of a Solar Mars Turbine at its natural gas compressor station located on the Kern River pipeline in Daggett, California;

WHEREAS, the additional turbine (together with other improvements) will increase the carrying capacity of natural gas in the Kern River pipeline by 19% (135 million cubic feet per day) and will thereby increase the amount of natural gas available for gas fired electric generators in the State of California;

WHEREAS, Kern River has indicated that it must begin actual construction on the Solar Mars Turbine at the Daggett compressor station no later than April 2, 2001, in order to be ready to increase its delivery of natural gas by July 1, 2001;

WHEREAS, pursuant to the New Source Review (“NSR”) provisions of the federal Clean Air Act (the “Act”) applicable in ozone nonattainment areas, 42 U.S.C. §§ 7501-7511f, and the regulations promulgated thereunder, the MDAQMD State Implementation Plan (“SIP”) must contain regulations applicable to the construction and modification to “major stationary sources,” including the prohibition that a “major stationary source” may not begin actual construction of a “major modification” without first obtaining a permit to construct;

WHEREAS, the SIP requires that no “major stationary source” may begin actual construction of a major modification before obtaining an ATC Permit, and further that a “major stationary source” with nitrogen oxide (NOX) emissions greater than 25 tons per year must identify offsets that would be applied at a ratio of 1.3 to 1 before a final ATC Permit

may be issued. MDAQMD Rule 201.

WHEREAS, installation of the Solar Mars Turbine at the Daggett compressor station will constitute a “major modification” to a “major stationary source” under the federal and state nonattainment permitting provisions;

WHEREAS, the MDAQMD will not be able to issue a final ATC that fully complies with the NSR provisions of the SIP to Kern River before April 2, 2001;

WHEREAS, California has indicated that Kern River’s addition of the Solar Mars Turbine at the Daggett compressor station, and the resulting increase in natural gas deliveries to the State of California, are crucial to maintaining reliable electric generation, as demonstrated in documents provided to the United States Environmental Protection Agency’s Office of Air and Radiation;

WHEREAS, the MDAQMD has determined that the additional NOX emissions that may be emitted by the Solar Mars Turbine at the Daggett compressor station during the first year of operation as allowed under this Order are unlikely to cause any air pollution standards to be exceeded or cause any significant impact on public health because the MDAQMD and the California Air Resources Board (“CARB”) anticipate providing offsets for all net emission increases of NOX during that year of operation;

WHEREAS, the United States Environmental Protection Agency, Region 9 (“EPA”) CARB, and Kern River (collectively designated as the “Parties”) agree that in order to alleviate the current energy generation shortage and to avoid potential blackouts in California, this Order is in the public interest; and

WHEREAS, Kern River represents that its purpose in entering into this Order and beginning actual construction and operation of its Solar Mars Turbine before receiving an

ATC Permit or identifying offsets is to assist the State of California in meeting the Governor's objective to provide additional electricity for California.

NOW, THEREFORE, the Parties agree that:

## **II. Definitions**

Unless otherwise expressly provided herein, terms used in this Order shall have the meaning given to those terms in the Act, and the regulations promulgated thereunder, and in the SIP. In addition, the following definitions shall apply to the terms contained within this Order:

1. "LAER/CA-BACT" shall mean the Lowest Achievable Emission Rate, as defined by Section 173 of the Act, and regulations located at 40 C.F.R. § 51.165(a)(1)(xiii), and as California BACT is defined in MDAQMD Rule 1302.

2. "Day" or "day" shall mean a calendar day;

3. "Effective Date" shall mean the last date this Order was signed by the Parties;

4. "Effective Period" shall mean the period starting the Effective Date and ending the Termination Date;

5. "Kern River" shall mean Kern River Gas Transmission Company and its successors and assigns, and its officers, directors, agents, servants, and employees in their capacities as such;

6. "Order" shall mean this Administrative Order on Consent.

## **III. Conclusions of Law:**

### **1. Authority to Issue Order**

EPA has the authority to enter into the Order pursuant to Section 113 of the Clean Air Act, 42 U.S.C. § 7413. Section 113(a)(1), (4) grants the Administrator of EPA the

authority to make findings of violation and to issue orders requiring persons in violation of the Act to come into compliance. This authority has been delegated to the Regional Administrator, EPA, Region 9 and redelegated to the Director, Air Division, EPA, Region 9.

By entering into this Order, the Parties agree that EPA is providing adequate Notice of EPA's allegation that Kern River will be in violation of the SIP if it begins actual construction and operation of the Solar Mars Turbine at the Daggett compressor station before Kern River receives an ATC Permit that requires compliance with LAER and identifies all necessary offsets. Kern River has not admitted that it is in violation of any requirement of the Act or SIP.

## 2. Applicability and Binding Effect

This Order shall apply to and be binding upon the EPA, CARB and Kern River, its successors and assigns, and its officers, directors, employees in their capacities as such, assignees and delegates and all other persons and entities as provided for in FRC P. 65(d).

During the Effective Period of this Order, Kern River shall give written notice and a copy of this Order to any successors in interest at least thirty (30) days prior to any transfer of ownership of any portion of the Daggett compressor station, any assignment of rights concerning, or delegation of duties relating to, any of the operations of any of the Solar Mars Turbine at the Daggett compressor station. Kern River shall condition any transfer, in whole or in part, of ownership, operation, or other interest of the Solar Mars Turbine at the Daggett compressor station upon acceptance by the transferee of the terms and conditions of this Order. Simultaneously with such notice, Kern River shall provide written notice of such transfer, assignment, or delegation to EPA. In the event of any such transfer, assignment,

or delegation, Kern River shall not be released from the obligations or liabilities of this Order unless EPA has approved the release of said obligations or liabilities.

#### **IV. Order To Comply:**

Pursuant to Section 113(a)(1), (4) of the Act, 42 U.S.C. §7413(a)(1), (4), the Director of the Air Division, Region 9, hereby issues this Order requiring Kern River to comply with the following terms and conditions while this Order is in effect:

1. On or before June 1, 2001, Kern River shall complete its application to MDAQMD for its ATC Permit. The complete information for the ATC Permit application shall contain a LAER/CA-BACT analysis that evaluates the technical feasibility of installing the air pollution controls on the Solar Mars Turbine that will at least meet the most stringent NOX emissions rate that has been achieved in practice. EPA and CARB have informed Kern River that the agencies believe that a NOX emissions rate of 5 ppmv has been achieved in practice. Kern River shall submit copies of the portion of its application evaluating LAER/CA-BACT to EPA and CARB.

2. On or before June 15, 2001, EPA and CARB shall submit a written response to Kern River constituting a LAER determination. EPA and CARB may establish the same or a different LAER emissions rate other than the rate of 5 ppmv which the agencies have asserted has been achieved in practice.

3. If Kern River commences operation under this Order prior to receiving an ATC Permit from MDAQMD containing a final LAER/CA-BACT rate as determined in Paragraphs 1-2 above, Kern River shall:

- a. use only natural gas to operate the Solar Mars Turbine at the Daggett compressor station;

b. limit NOX emissions from the Solar Mars Turbine at the Daggett compressor station to 25 ppmv NOX at 15% O2, except during periods of startup, shutdown and malfunction as defined by federal and state law; and

c. record and provide to EPA excess NOX emissions reports for each month of operation under this Order.

**V. General Provisions**

1. Any modification of this Order shall be by agreement of the Parties and in writing and shall not take effect until the written agreement is signed by the Parties.

2. Each undersigned representatives of the Parties certifies that he or she is authorized to enter into the terms and conditions of this Order and to execute this document.

3. Unless this Order states otherwise, whenever, under the terms of this Order, written notice is required to be given, or a report or other document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change of address to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided.

4. The following addresses shall be used for notices and submissions required by this Order: As to EPA:

Director, Air Division  
United States Environmental Protection Agency  
75 Hawthorne Street (AIR-1)  
San Francisco, California 94105

As to Kern River:

Kris Hohenshelt, Manger Land and Environment  
Kern River Gas Transmission Company  
295 Chipeta Way

P.O. Box 58900  
Salt Lake City, Utah 84158-0900

**VI. Copies of Order:**

This Order has been issued to Robert L. Sluder, Vice President, Kern River Gas Transmission Company. Copies of this Order have also been sent to Robert Wyman, Counsel for Kern River, Karen Novak, District Counsel, MDAQMD, and to Kathleen Walsh, Counsel for the California Air Resources Board.

**VII. Effect of Order:**

The entry of this Order shall not constitute an admission by Kern River of any violation alleged herein nor of any statute or rule.

**VIII. Effective Date and Termination of this Order:**

The Termination Date of this Order shall be: (a) issuance of a final ATC Permit to Kern River for the Solar Mars Turbine at the Daggett compressor station, which includes a requirement to comply with LAER/CA-BACT as determined pursuant to Paragraph IV.1-2 of this Order, or (b) commencement of Administrative Order on Consent No. R9-2001- 06; whichever is later. In no event shall the Termination Date be later than one year from the Effective Date of this Order.

Notwithstanding the paragraph above, this Order shall terminate, after notice by EPA, if: (1) an imminent and substantial endangerment to the public health, welfare or the environment occurs or (2) Kern River violates the emission rate of 25 ppmv, except for periods of startup, shutdown and malfunction, as set forth in Paragraph IV.3.b . This Order shall terminate immediately upon receipt by Kern River of the notice of termination.

**IX. Enforcement:**

Any violation of this Order may result in a civil judicial action for an injunction and



civil penalties up to \$27,500 per day per violation, 42 U.S.C. §7413(b)(2). EPA may also file an action seeking criminal sanctions pursuant to Section 113(c) of the Act. 42 U.S.C. §7413(c).

**X. Opportunity for Conference and Effective Date:**

Section 113(a)(4) provides that this Order shall not take effect until Kern River has had an opportunity to confer with EPA regarding the alleged violations. Kern River's signature in the space provided below shall constitute its acknowledgment that it has had sufficient opportunity to confer with EPA prior to issuance of the Order. Kern River's signature also constitutes its agreement to comply with Section IV above (Order to Comply), and the date of Kern River's signature shall constitute the effective date of this Order.

The undersigned representatives of EPA and Kern River each certify that he or she is authorized to enter into the terms and conditions of this Order and to bind legally the respective Parties to this Order.

DATE: U.S.E.P.A.

March 30, 2001

\_\_\_\_\_/s/\_\_\_\_\_  
Amy Zimpfer  
Acting Director, Air Division, Region 9

Acknowledged and Agreed:

DATE: KERN RIVER GAS TRANSMISSION COMPANY

\_\_\_\_\_/s/\_\_\_\_\_  
By: Robert L. Sluder  
Vice President

DATE: CALIFORNIA AIR RESOURCES BOARD

\_\_\_\_\_/s/\_\_\_\_\_

Mike Kenny, Executive Officer